



School Choice in Texas Issue Brief

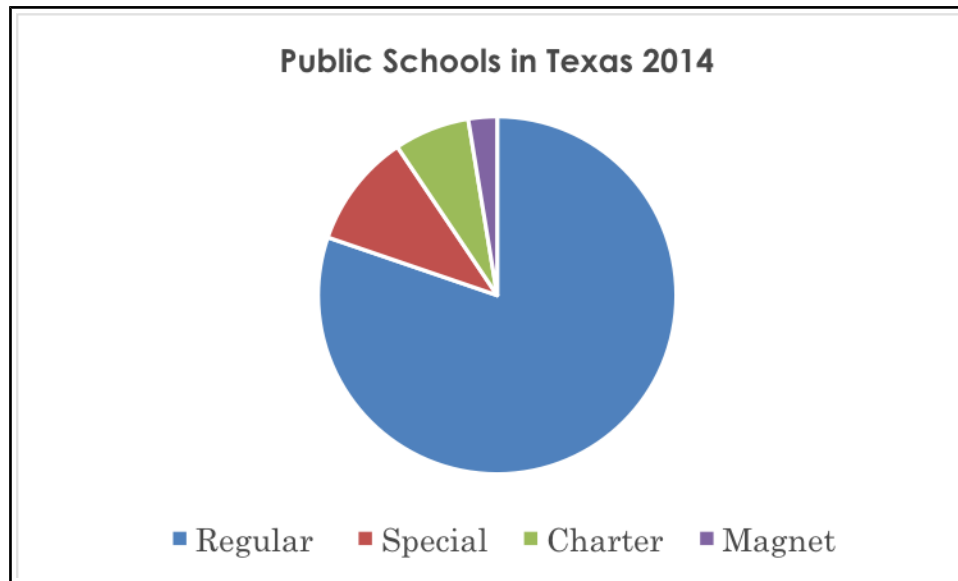
The Texas Council for Developmental Disabilities supports the position that all students have a right to learn together with students their own age, with and without disabilities, in the same schools, classrooms, and other educational and extracurricular programs. The Council believes that serving the individualized needs of each student starts with appropriate identification of all students who have disabilities that require special education services (Individuals with Disabilities Education Act IDEA) or services provided under Section 504 of the Rehabilitation Act. Special education is not a separate educational system, but a support service provided to students with specific needs within the general education system.

Traditional Public Schools and Alternatives

As of 2015-2016, 5,299,728 students were enrolled in Texas schools from early education through grade 12.¹ These students attended more than 8,500 preschool, elementary, and secondary schools.

Public schools in Texas are organized by school district. As of August 2014, the Texas Education Agency oversaw 1,247 public school districts, open enrollment charter schools, juvenile justice districts, Texas School for the Blind and Visually Impaired, and Texas School for the Deaf. Charter school districts are open-enrollment school districts chartered by the commissioner of education with final approval for operation provided by the State Board of Education. Established by the Texas Legislature in 1995 to promote local initiative, charter school districts are subject to fewer regulations than other public school districts.

¹TEA. <https://rptsvr1.tea.texas.gov/cgi/sas/broker>



Public schools in Texas are predominantly regular (7,750), meaning that they are not dedicated exclusively to special education (21), vocational education (0), or alternative education (977). There are more than two times as many charter schools (658) as magnet schools (251).² Magnet schools are public schools that focus on advanced study in specific areas, such as science, math, technology, or languages, and draw students without regard to school boundaries.

In Texas, 95.9% of public schools reported at least one student with an Individual Education Plan (IEP) for those needing special education, with the state average of 8.4% of students with an IEP.³ Texas is currently under review by the Department of Education⁴ for under-identification of students eligible for special education. The most current national average for the percentage of students in special education in public schools is approximately 13%.⁵

Public Alternatives: Charter Schools

As of 2014, Texas ranked second nationally in the number of students in charter schools (235,687), following California (513,350). Between 1999 and 2014, the number of charter schools in Texas grew from 176 to 658 and the percentage of the total public school population in charter schools in Texas increased from 1.4% to 4.6%. Currently only three states have more than 10% of their public school population in charter schools: the District of Columbia (42.4%), Arizona (17.8%), and Colorado (10.9%). Ten states have no charter

² https://nces.ed.gov/pubs2015/2015151/tables/table_03.asp

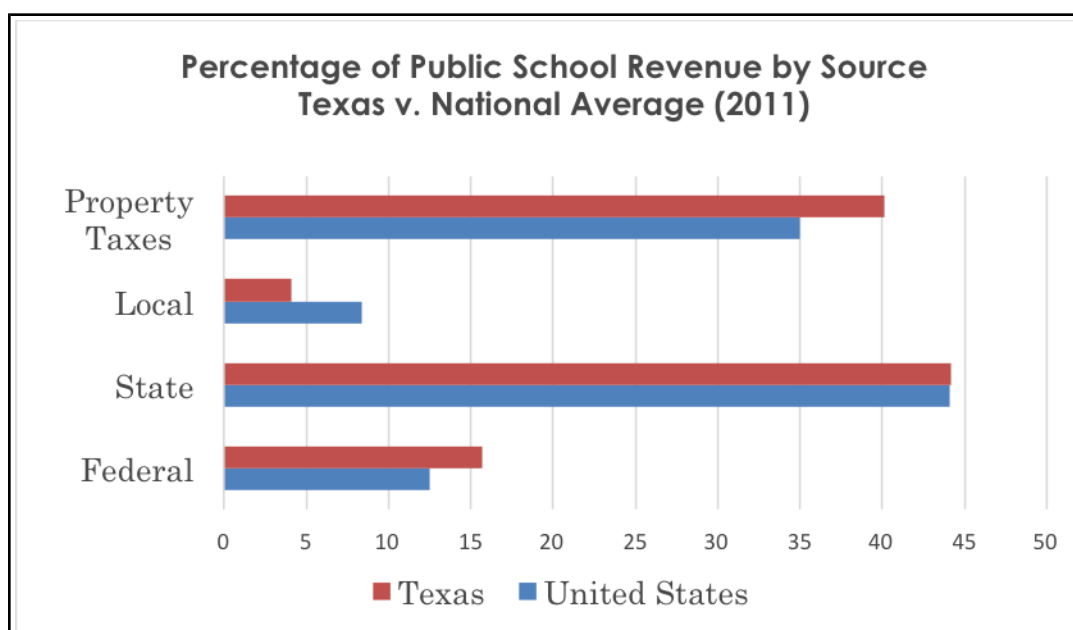
³ https://nces.ed.gov/surveys/sass/tables/sass1112_2013312_s2s_002.asp

⁴ <http://www.houstonchronicle.com/news/houston-texas/houston/article/Feds-order-Texas-to-eliminate-use-of-benchmark-on-9652019.php>

schools.⁶ Charter schools report approximately 9.9% of students having an IEP.⁷

School Funding

From 1999 to 2012, the average private tuition charge increased from \$6,820 to \$10,940 (in constant 2012-2013 dollars). Nationally public schools rely largely on state income taxes and local taxes (mainly property taxes) to fund public schools. Vermont, for example, receives more than 80% of its funding from state income tax, and in 2015 it led the nation spending \$21,263 per student. Other high-ranking states include New York (\$20,428), New Jersey (\$20,117), Alaska (\$19,244), and Rhode Island (\$18,627), all of which have a state income tax.⁸ Texas is one of seven states that does not have a state income tax. Its



reliance on property taxes is higher than the national average. It ranks 38th nationally, spending \$9,561 per student in 2015.⁹

Private Alternative: Private Schools

The most recent national data available (2012) on 16,830 private schools shows that almost two-thirds reported serving at least one student who had an IEP, with an average of 7 students per school. Religious schools, which accounted for more than 69% of all private schools, ranged from 4.1% to 5.7% of students with IEPs.¹⁰ This is distinctly

⁵ <https://nces.ed.gov/fastfacts/display.asp?id=64>

⁶ https://nces.ed.gov/programs/digest/d15/tables/dt15_216.90.asp

⁷ https://nces.ed.gov/surveys/sass/tables/sass1112_2013312_s12n_002.asp

⁸ http://www.nea.org/assets/docs/NEA_Rankings_And_Estimates-2015-03-11a.pdf

⁹ <http://trailblazersblog.dallasnews.com/2016/05/texas-still-38th-in-per-pupil-spending-in-u-s-which-may-hurt-its-case-in-school-finance-suit.html/>

¹⁰ https://nces.ed.gov/surveys/sass/tables/sass1112_2013312_s2a_002.asp

different from data on public schools from the same period, reporting an average percentage of students with an IEP of 13%. This data reflects a trend of private schools serving few or no students with an IEP, or serving students in a segregated setting. Approximately 10% of private schools (1,600) specialize in special education.

Relying on property taxes ties public schools to the economy of the communities in which they are located. In Texas, efforts have been made to equalize funding across richer and poorer school districts, but differences in the quality of education remain. Since 1984, school finance has been fought in the courts six times, most recently in 2016 when the Texas Supreme Court upheld the current funding strategy, nicknamed “Robin Hood” because it requires wealthier districts to assign a portion of their property tax revenues to the state for redistribution to poorer districts. The economic challenge stems from a cut of more than \$5 billion in school funding by the Texas Legislature in 2011. Although \$4.5 billion was restored, inflation and population growth have outstripped the system’s capacity.¹¹ Not surprisingly, Texas ranked 15th in local spending and 36th in state government spending in 2014.¹²

Texas Legislative Responses

The Texas Legislature’s support of public options of charter and magnet schools demonstrate efforts to increase the quality of education for individual students. These alternatives are not problem-free but they do offer individual students with educational choice within the publically funded system. These public options provide alternatives to individual situations when remaining in the assigned school poses challenges that interfere with learning.

Vouchers

“Voucher” is a term to describe the assignment of a fixed amount of public education funding to an individual student to pay for some or all of the tuition at a private school. Since 2005, legislation has been filed every session calling for a state Constitutional amendment that would prohibit using vouchers for education drawn against public funds. Since the 76th Texas Legislature in 1999, 25 pro-voucher bills have been filed, but they have been rarely heard and never passed. Some have called for studies and/or pilots of private school vouchers, with vouchers sometimes referred to as “scholarships” or “grants” and private schools called “nongovernmental schools.” Although vouchers continue to be discussed, there were no voucher bills introduced during the most recent legislative session.

Education Savings Accounts

Education savings accounts (ESAs) are a variation on the transfer of public funds to pay

¹¹ <http://abc13.com/politics/robin-hood-school-funding-okd-by-texas-supreme-court-/1337142/>

¹² http://www.nea.org/assets/docs/NEA_Rankings_And_Estimates-2015-03-11a.pdf

for private education. A small number of states (Mississippi, Nevada, Tennessee, Arizona, and Florida) have adopted or expanded ESAs. ESAs can be thought of as vouchers in the form of a debit card with fewer limits on how the funds can be spent. In this way, they are similar to health savings accounts. Parents can spend down the account on qualified educational expenses such as tuition, therapies, counseling, and other state-approved expenses. The latitude to spend education funds on counseling and therapies is appealing to families who are struggling to afford these health services but raises concerns about the resulting effect on adequacy of education.

The ESA is more attractive to some legislators than vouchers, which generally simply transfer a fixed amount from a public to private provider. ESAs give the legislature the flexibility to reduce the average cost per student and the savings can go back to the public school that the student is leaving, to General Revenue, or to another fund. Some states that have implemented the ESA have reserved 10% of the total cost per student and diverted it back to the public school to help the school cover operational costs. The amount that could be withheld and diverted is at the discretion of the legislature.

Some states have also chosen to dedicate 3% of the total ESA amount to pay for administration of the account. In a scenario in which 10% is diverted and 3% is dedicated to account administration, the final amount to be put toward the student's education would be 87% of the average cost per student. Any difference between that amount and necessary expenses would have to be made up by the parents or obtained in other ways. For this reason, these options could be limited to parents and students with higher incomes.

Survey Responses

The Council of Parent Attorneys and Advocates, Inc., conducted a survey of its members and found that:

- Parents like the idea of vouchers even when they do not use them.
- Parents choose vouchers out of urgency and without regard to civil rights.
- Little data exists to track IDEA rights after families leave the public school.
- Funding is rarely enough to cover the costs, so only families with sufficient financial resource have choice.
- Some schools intentionally accept students with disabilities to get funds and then expel them back into an inappropriate school situation.
- Special education specific programs don't accept all students with disabilities and rarely accept students with more than one disability.
- Data is not available to compare public school and private school students

academically.¹³

Following this survey, the Council of Parent Attorneys and Advocates, Inc. concluded:

“We do not purport to say that vouchers in their totality are good or bad, helpful or not for students with disabilities. What we do know emphatically is: All civil rights need to be upheld in the state-approved construct; increased access to quality education is necessary; the options must be affordable to all; and private schools of choice must be held to the same accountability requirements to which public schools are held.”¹⁴

Considerations for Students with Disabilities

1. Some estimate that the cost per student is more than doubled for students with disabilities. As a result, students with disabilities would need to be provided vouchers and ESAs with equitable, not necessarily equal, funding.
2. Public schools that accept federal funding are required to comply with IDEA for special education, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA). Although private schools are also required to comply with Section 504 and the ADA, not all private schools are required to comply with IDEA requirements. Private schools are not required to follow a student’s pre-existing individualized education plan (IEP), nor are students in private schools required to be provided an IEP (although they are provided a service plan).
3. Under current state law, the Texas Education Agency has no responsibility to provide oversight or respond to complaints about access to special education in private schools. This means that if a student with a disability does not receive individualized instruction specific to his or her needs, or is not provided education in the least restrictive environment, the parent could appeal to the administration of the private school, but the state would have no standing to intervene in the absence of legislation.
4. There is disagreement about whether private education purchased with public funds becomes public education that is subject to federal requirements. Students under IDEA are required to be provided “...a free and appropriate public education.” If the voucher or ESA does not cover the full cost of a private placement, the education is no longer free.
5. State law requires that special education teachers must be certified in any setting;

¹³Almazan S, Marshall, D. School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice. The Council of Parent Attorneys and Advocates, Inc. 2016.

¹⁴Almazan S, Marshall, D. School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice. The Council of Parent Attorneys and Advocates, Inc. 2016.

however, general education teachers in private schools are not required to be certified under state law. Successful inclusion requires teacher education programs to prepare all educators and administrators, not only those providing special education services, to work with the full range of students in inclusive settings with access to ongoing professional development.

The Council believes that schools that accept state or federal money to educate students must provide students with the same educational rights and opportunities they would be accorded in the traditional public education system. School choice options must not place student with disabilities and their parents at a disadvantage. Current options related to vouchers and some ESAs are limited to (1) placement in private schools that may be ill-prepared to serve students with disabilities, or (2) placement in private schools that focus exclusively on students with disabilities, in which case the educational experience offered would not be considered “inclusive” in the community at large.